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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/737,235

12/16/2003

Jody Lynn Hoying

9456

6351

27752

7590

08/08/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/737,235

Applicant(s)

HOYING, JODY LYNN

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 22, 2006 has been entered.

### ***Response to Amendment***

2. The Amendment submitted on May 22, 2006, has been entered. Claim 2 has been cancelled. Claims 1, 14, and 15 have been amended. Therefore, the pending claims are 1 and 3 - 15.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 3 – 5, 8, 12, 14, and 15 stand rejected under 35 U.S.C. 102(e) as being anticipated by Provost et al. (2004/0157036) for the reasons of record.

5. Claims 1, 3, 6 – 9, 12, 14, and 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Tranfield (3,684,284) for the reasons of record.

6. Claims 1, 3, 6 – 10, and 12 – 15 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (5,508,080) for the reasons of record.

### ***Claim Rejections - 35 USC § 103***

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7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reason of record.

***Double Patenting***

9. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 27 of copending Application No. 10/737,306 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 6 – 12, and 14 – 30 of copending Application No. 10/737,307 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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12. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1 and 3 – 15 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020. Although the conflicting claims are not identical, they are non patentably distinct from each other because the '020 application also claims a fibrous web with discrete regions of fibers forming tufts, having linear orientation and a longitudinal axis.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

14. Applicant's arguments filed May 22, 2006 have been fully considered but they are not persuasive. The applicant argues that Provost et al. fails to teach a discrete region with a linear orientation and a longitudinal axis in the MD-CD plane (response, pages 6 – 7). However, the tufts taught by Provost et al. have fibers aligned in the vertical direction, producing the required linear orientation. Further, the tuft, as a whole, has a distinct length in the longitudinal direction, even though it was made from a circular needle. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis is greater than the orientation in any other direction. Thus, the tuft disclosed by Provost et al. meets both the claimed limitations.

Further, the applicant argues that Provost et al. fails to teach the material is a topsheet for a disposable absorbent article or an absorbent core for a disposable absorbent article (response, pages 7 – 8). However, these limitations are considered to be intended use and not given patentable weight at this time. The claims only positively recite structure of the two layer composite material which is taught by Provost et al. Further, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.

15. The applicant argues that Tranfield fails to teach a discrete region with a linear orientation and a longitudinal axis in the MD-CD plane (response, pages 8 – 9). However, the tufts taught by Tranfield have fibers aligned in the vertical direction, producing the required linear orientation. Further, the tuft, as a whole, has a distinct length in the longitudinal direction, even though it was made from a circular needle. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis in greater than the orientation in any other direction. Thus, the tuft disclosed by Tranfield meets both the claimed limitations.

Further, the applicant argues that Tranfield fails to teach the material is a topsheet for a disposable absorbent article or an absorbent core for a disposable absorbent article (response, pages 9 – 10). However, these limitations are considered to be intended use and not given patentable weight at this time. The claims only positively recite structure of the two layer composite material which is taught by Tranfield. Further, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not

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differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.

16. The applicant argues that Sorimachi et al. fails to teach a discrete region with a linear orientation and a longitudinal axis in the MD-CD plane (response, pages 10 – 11). However, the tufts taught by Sorimachi et al. have fibers aligned in the vertical direction, producing the required linear orientation. Further, the tuft, as a whole, has a distinct length in the longitudinal direction, even though it was made from a circular needle. The claim does not require that the linear orientation be a certain length or that the linear orientation in the longitudinal axis in greater than the orientation in any other direction. Thus, the tuft disclosed by Sorimachi et al. meets both the claimed limitations.

Further, the applicant argues that Sorimachi et al. fails to teach the material is a topsheet for a disposable absorbent article or an absorbent core for a disposable absorbent article (response, pages 11 – 12). However, these limitations are considered to be intended use and not given patentable weight at this time. The claims only positively recite structure of the two layer composite material which is taught by Sorimachi et al. Further, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Thus, the rejections are maintained.


The applicant argues that the rejections based on Sorimachi et al. in view of Kotek et al. do not teach the claimed invention since Sorimachi et al. fails to teach the limitations of a distinct linear orientation and a longitudinal axis (response, pages 12 – 13). However, these features are taught by Sorimachi et al. as set forth above. Thus, the rejection is maintained.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jenna-Leigh Befumo  
August 3, 2006